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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 490 OF 1990

Shri Anil Limbaji Lakshare ... Appellant

V/s

The State of Maharashtra ... Respondent

Ms. Sharmila Kaushik i/by Mr. Shirish Gupte for the appellant/accused.

Mr. P.S. Hingorani, A.P.P. for the respondent State.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 22ND MARCH, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. The accused appellant has been convicted and sentenced under Section 302 of the Indian Penal Code by the Sessions Judge, Pune, in Sessions Case No. 73 of 1990. This appeal impugns the judgment of the Sessions Judge, Pune.

2. With the assistance of the learned advocate appointed for the appellant and the learned A.P.P., we have scrutinized the evidence on record and the judgment impugned in the present appeal. However, we are unable

to agree with the findings recorded by the learned Sessions Judge. From the evidence on record we find that it is very difficult to believe the story of the prosecution.

3. It appears that on 29.10.1989, one Suresh Pawar who plies an auto-rickshaw went out at about 8.30 pm with the deceased Ashok Lakshare and Ashok Sonawane. While they were purchasing cigarettes and having cup of tea, one Kisan Lakshare approached them and requested Suresh to take him to Navjeevan Hospital where his son who had suffered burn injuries was admitted. Suresh then drove Kisan Lakshare to the hospital. They were accompanied by the victim and Ashok Sonawane as also three other persons who were accompanying Kisan to the hospital. Thus, these seven persons reached the hospital when all but the victim and Ashok Sonawane alighted from the rickshaw. Suresh entered the hospital alongwith Kisan and his friends. He returned after some time when he saw the accused approaching the rickshaw. He heard the accused asking Ashok Sonawane what the rickshaw fare was from Chitra Talkies where Kisan had hired the rickshaw, upto the hospital. Ashok Sonawane pointed out that he was not the rickshaw driver and, therefore, the accused should ask Suresh about the fare. According to the prosecution, when Suresh Pawar reached the rickshaw, the

accused asked him to accept the fare. However, Suresh refused to accept it since he was well acquainted with Kisan. This aggravated the accused and a quarrel ensued between the victim and the accused which led to fisticuffs. They entered into a bylane and continued quarrelling. Suresh then checked on them as they had not returned even after 10 minutes. Suresh saw the scuffle between the victim and the accused. He intervened and separated them. According to the prosecution, he walked back to the rickshaw. When the victim was about to enter it, the accused pulled him out and inflicted stab injuries with a weapon. The victim collapsed and died on the spot. Suresh then went to the victim's residence and informed his mother. The victim's family rushed to the spot when they found he was already dead. The police arrived on the scene of offence. They found that Suresh's clothes were blood stained. Suresh's clothes were attached. An F.I.R. was lodged by Suresh. The accused, according to the prosecution, was absconding and was found in Lonawala and arrested on 31.10.1989. The prosecution alleges that the knife used by him to inflict the injuries and his blood stained clothes were recovered at his instance. The accused was then charged for having committed the offence punishable under Section 302 of the Indian Penal Code. His trial was committed to

Sessions. The Sessions Court convicted and sentenced him under Section 302 of the Indian Penal Code to imprisonment for life.

4. PW-1 Suresh Pawar is supposedly an eye witness to the incident. However a bare perusal of his testimony indicates that this witness has changed his version about the incident at least 4 or 5 times during the course of his deposition. Initially he states that he came out of Navjeevan Hospital while Ashok Sonawane and the victim were still sitting in the rickshaw. He has stated that it was between 10.30 and 11.00 at night and, therefore, he and Ashok Sonawane returned home in the rickshaw while the victim waited at the hospital. According to this witness, he learnt that the victim was murdered when he read the newspaper on the following day. He goes on to state in his deposition that his blood stained clothes were attached by the police and that he had indeed filed the F.I.R. Then he states that his clothes were stained with blood when he separated the victim and the accused when they were quarrelling. Thereafter his version changes again and he states that the accused and the victim were quarrelling in a bylane which was at the distance of 25 ft. from the hospital. He saw the accused running away from that place and the victim lying on the road. He speaks of having been

threatened by the accused if he did not leave the spot. He then claims that he went to the victim's residence and told his mother of the incident. He changes his version yet again and claims that when he came out of the hospital, the accused approached his rickshaw in which Ashok Sonawane and the victim were sitting. He claims that the accused called out to the victim. The accused and the victim went towards the bylane. The witness claims that he and Ashok Sonawane waited in the rickshaw for the next 5 to 10 minutes. When the other two persons did not return, he went into the bylane and saw the scuffle between the accused and the victim. He claims to have separated them and all of them proceeded towards the rickshaw. He then says that when the victim was about to sit in the rickshaw, the accused pulled him out and assaulted the victim with some weapon. In the cross-examination, he changes his version yet again. He states that he had not seen the accused that night. A suggestion was put to him in the cross-examination that he had not seen the incident at all. The witness answered that it was true that he had seen the incident but he clarified that what he had seen was that Kisan Lakshare's son had sustained burn injuries and that he was admitted in Navjeevan Hospital. This kind of testimony does not inspire any confidence. It is impossible to accept that this witness had seen the

incident. No reliance can be placed on such a testimony where the witness, during the course of his deposition, changes his version about 4 or 5 times.

5. PW-4 Ashok Sonawane who the prosecution claims was in the rickshaw alongwith the victim at Navjeen Hospital, also cannot be believed. He has been declared hostile and in fact the Sessions Court has issued a show cause notice to him for giving false evidence on oath.

6. Therefore, what remains is the medical evidence on record and the recoveries made. The panch witnesses who have been examined as PW-7 and PW-8 do not support the case of the prosecution. They have been declared hostile. However, the panchanama has been proved through the investigating officers who have been examined as PW-9, PW-10 and PW-11. The report from the chemical analyzer indicates that the blood group of both the accused and the victim was "B". The knife recovered bore blood stains of group "B". The recovery therefore does not conclusively lead to the inference that it was the accused who had inflicted the injuries on the victim.

7. The prosecution has failed to prove its case. The eye witness accounts are riddled with holes. In fact,

from the accounts of PW-1, it is difficult to ascertain as to when the accused came in contact with the victim. Kisan who has been examined as PW-6 states that while he was proceeding in the rickshaw alongwith six others, they came across the accused who also accompanied them in the same rickshaw to the hospital. It is extremely difficult to believe that all eight of them travelled in one rickshaw. Apart from this, while PW-1 claims in one of his versions that the accused approached the rickshaw between 10.30 and 11.00 p.m. for the first time, Kisan Lakshare, PW-6 claims that the accused accompanied them to the hospital. Therefore, there is contradictory evidence on record.

8. The spot of the incident or the attack on the victim has not been established. PW-1 has claimed initially that when he entered the bylane he saw the victim lying on the road with blood stained clothes. The accused threatened to kill him if he did not leave the place. Thereafter the accused fled from the scene of offence. He has deposed later that the accused stabbed the victim while the latter was getting into the autorickshaw which was parked in front of Navjeevan Hospital. The bylane was about 25 feet away from the hospital. The spot panchanama does not mention Navjeevan Hospital at all. In fact, the spot of the

incident is noted as a dirt road which is presumably the bylane which PW-1 has spoken about. The inquest panchanama records that the body of the victim was in a supine position. However, PW-6 claims that he saw the body immediately after the incident as PW-1 had returned to the hospital to tell him about the incident. He states that the victim was lying prostrate on the road. Therefore the spot of the incident has not been proved.

9. The prosecution has not been able to prove beyond reasonable doubt that the accused was responsible for the victim's death. There are too many lacunae in the evidence on record. It is difficult to accept the veracity of PW-1 who the prosecution claims is an eye witness.

10. Hence the appeal is allowed.

11. Conviction of the appellant - accused under Section 302 of the Indian Penal Code is set aside. He is acquitted of the charge. His bail bond stands cancelled. If he has paid the fine, it should be refunded to him. The rest of the order of the trial Court regarding issue of show cause notice to the prosecution witness Ashok Mahadeo Sonawane to remain the same.

12. Fees of the learned advocate appointed for the appellant/accused are quantified at Rs.1000/-.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)